

## § 160.37

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### § 160.37 Real estate for office and related facilities.

A Federal savings association may invest in real estate (improved or unimproved) to be used for office and related facilities of the association, or for such office and related facilities and for rental or sale, if such investment is made and maintained under a prudent program of property acquisition to meet the Federal savings association's present needs or its reasonable future needs for office and related facilities. A Federal savings association may not make an investment that would cause the outstanding book value of all such investments (including investments under § 159.4(e)(2) of this chapter) to exceed its total capital.

### § 160.40 Commercial paper and corporate debt securities.

Pursuant to HOLA section 5(c)(2)(D), a Federal savings association may invest in, sell, or hold commercial paper and corporate debt securities subject to the provisions of this section.

(a) *Limitations.* (1) Commercial paper must be:

(i) Investment grade as of the date of purchase; or

(ii) Guaranteed by a company having outstanding paper that meets the standard set forth in paragraph (a)(1)(i) of this section.

(2) Corporate debt securities must be:

(i) Securities that may be sold with reasonable promptness at a price that corresponds reasonably to their fair value; and

(ii) Investment grade.

(3) A Federal savings association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any one person or entity affiliated with such issuer, together with other loans, shall not exceed the general lending limitations contained in § 32.3(a) of this chapter.

(4) Investments in corporate debt securities convertible into stock are subject to the following additional limitations:

(i) The purchase of securities convertible into stock at the option of the issuer is prohibited;

(ii) At the time of purchase, the cost of such securities must be written down to an amount that represents the investment value of the securities considered independently of the conversion feature; and

(iii) Federal savings associations are prohibited from exercising the conversion feature.

(5) A Federal savings association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this section.

(b) Notwithstanding the limitations contained in this section, the OCC may permit investment in corporate debt securities of another savings association in connection with the purchase or sale of a branch office or in connection with a supervisory merger or acquisition.

(c) *Underwriting.* Before committing to acquire any investment security, a Federal savings association must determine whether the investment is safe and sound and suitable for the association. The Federal savings association must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with the investment activity. The Federal savings association must also determine that the issuer has adequate resources and the willingness to provide for all required payments on its obligations in a timely manner.

[76 FR 49030, Aug. 9, 2011, as amended at 77 FR 35258, June 13, 2012; 77 FR 37283, June 21, 2012]

### § 160.41 Leasing.

(a) *Permissible activities.* Subject to the limitations of this section, a Federal savings association may engage in leasing activities. These activities include becoming the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, obtaining an assignment of a lessor's interest in a lease of such property, and incurring obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(b) *Definitions.* For the purposes of this section:

(1) The term *net lease* means a lease under which the Federal savings association will not, directly or indirectly, provide or be obligated to provide for:

(i) The servicing, repair or maintenance of the leased property during the lease term;

(ii) The purchasing of parts and accessories for the leased property, except that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of paragraph (c)(2)(i) of this section;

(iii) The loan of replacement or substitute property while the leased property is being serviced;

(iv) The purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(v) The renewal of any license, registration, or filing for the property unless such action by the Federal savings association is necessary to protect its interest as an owner or financier of the property.

(2) The term *full-payout lease* means a lease transaction in which any unguaranteed portion of the estimated residual value relied on by the association to yield the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25% of the original cost of the property to the lessor. In general, a lease will qualify as a full-payout lease if the scheduled payments provide at least 75% of the principal and interest payments that a lessor would receive if the finance lease were structured as a market-rate loan.

(3) The term *realization of investment* means that a Federal savings association that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

(i) Rentals;

(ii) Estimated tax benefits, if any; and

(iii) The estimated residual value of the property at the expiration of the term of the lease.

(c) *Finance leasing*—(1) *Investment limits*. A Federal savings association may exercise its authority under HOLA sections 5(c)(1)(B) (residential real estate loans), 5(c)(2)(A) (commercial, business, corporate or agricultural loans), 5(c)(2)(B) (nonresidential real estate loans), and 5(c)(2)(D) (consumer loans) by conducting leasing activities that are the functional equivalent of loans made under those HOLA sections. These activities are commonly referred to as financing leases. Such financing leases are subject to the same investment limits that apply to loans made under those sections. For example, a financing lease of tangible personal property made to a natural person for personal, family or household purposes is subject to all limitations applicable to the amount of a Federal savings association's investment in consumer loans. A financing lease made for commercial, corporate, business, or agricultural purposes is subject to all limitations applicable to the amount of a Federal savings association's investment in commercial loans. A financing lease of residential or nonresidential real property is subject to all limitations applicable to the amount of a Federal savings association's investment in these types of real estate loans.

(2) *Functional equivalent of lending*. To qualify as the functional equivalent of a loan:

(i) The lease must be a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease;

(ii) The portion of the estimated residual value of the property relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property; and

(iii) At the termination of a financing lease, either by expiration or default, property acquired must be liquidated or released on a net basis as soon as practicable. Any property held

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in anticipation of re-leasing must be reevaluated and recorded at the lower of fair market value or book value.

(d) *General leasing.* Pursuant to section 5(c)(2)(C) of the HOLA, a Federal savings association may invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for the purpose of leasing that property. In contrast to financing leases, lease investments made under this authority need not be the functional equivalent of loans.

(e) *Leasing salvage powers.* If, in good faith, a Federal savings association believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, it may:

(1) As the owner and lessor, take reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) Include any provisions in a lease, or make any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (e)(1) and (e)(2) of this section.

### § 160.42 State and local government obligations.

(a) Pursuant to HOLA section 5(c)(1)(H), a Federal savings association may invest in obligations issued by any state, territory, possession, or political subdivision thereof (“governmental entity”), subject to appropriate underwriting and the following conditions:

	Aggregate limitation	Per-issuer limitation
(1) General obligations .....	None .....	None.
(2) Other obligations of a governmental entity (e.g., revenue bonds) if the issuer has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.	None .....	10% of the institution's total capital.
(3) Obligations of a governmental entity that do not qualify under any other paragraph but are approved by the OCC.	As approved by the OCC	10% of the institution's total capital.

(b) *What is a political subdivision?* *Political subdivision* means a county, city, town, or other municipal corporation, a public authority, or a publicly-owned entity that is an instrumentality of a state or a municipal corporation.

(c) *What is a general obligation of a state or political subdivision?* A *general obligation* is an obligation that is guaranteed by the full faith and credit of a state or political subdivision that has the power to tax. Indirect payments, such as through a special fund, may qualify as general obligations if a state or political subdivision with taxing authority has unconditionally agreed to provide funds to cover payments.

(d) For all securities, the institution must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated

with the investment activity and determine that such investment is appropriate for the institution. The institution must also determine that the obligor has adequate resources and willingness to provide for all required payments on its obligations in a timely manner.

[76 FR 49030, Aug. 9, 2011, as amended at 77 FR 35258, June 13, 2012]

### § 160.43 Foreign assistance investments.

Pursuant to HOLA section 5(c)(4)(C), a Federal savings association may make foreign assistance investments in an aggregate amount not to exceed one percent of its assets, subject to the following conditions:

(a) For any investment made under the Foreign Assistance Act, the loan